
HOUSE BILL 1632

State of Washington 59th Legislature 2005 Regular Session

By Representatives Grant, Condotta, Conway, Crouse and Armstrong

Read first time 01/31/2005. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to sampling activities of licensees under Title 66
2 RCW; amending RCW 66.24.360, 66.24.371, 66.28.040, and 66.28.155; and
3 reenacting and amending RCW 66.28.010.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 66.24.360 and 2003 c 167 s 8 are each amended to read
6 as follows:

7 There shall be a beer and/or wine retailer's license to be
8 designated as a grocery store license to sell beer, strong beer, and/or
9 wine at retail in bottles, cans, and original containers, not to be
10 consumed upon the premises where sold, at any store other than the
11 state liquor stores.

12 (1) Licensees obtaining a written endorsement from the board may
13 also sell malt liquor in kegs or other containers capable of holding
14 less than five and one-half gallons of liquid.

15 (2) The annual fee for the grocery store license is one hundred
16 fifty dollars for each store.

17 (3)(a) Licensees under this section may provide, free or for a
18 charge, single-serving samples of two ounces or less, but no more than
19 a total of eight ounces, to customers for the purpose of sales

1 promotion if the licensees operate fully enclosed retail areas
2 encompassing at least twenty thousand square feet. Sampling activities
3 of licensees under this section are subject to RCW 66.28.010 and
4 66.28.040.

5 (b) Except as provided in this subsection, manufacturers,
6 importers, and distributors of liquor may not bear the direct or the
7 indirect costs of providing any samples. Domestic breweries,
8 microbreweries, and certificate of approval holders may bear both the
9 direct and the indirect costs of providing samples of their own brands
10 of beer. Domestic wineries may bear only the indirect costs of
11 providing samples of their own brands of wine.

12 (c) The service area and facilities must be located within the
13 licensee's fully enclosed retail area, and must be of a size and design
14 such that the licensee can observe and control persons in the area to
15 ensure that persons under twenty-one years of age and apparently
16 intoxicated persons cannot possess or consume alcohol. Customers must
17 remain in the service area while consuming samples.

18 (4) The board shall issue a restricted grocery store license
19 authorizing the licensee to sell beer and only table wine, if the board
20 finds upon issuance or renewal of the license that the sale of strong
21 beer or fortified wine would be against the public interest. In
22 determining the public interest, the board shall consider at least the
23 following factors:

24 (a) The likelihood that the applicant will sell strong beer or
25 fortified wine to persons who are intoxicated;

26 (b) Law enforcement problems in the vicinity of the applicant's
27 establishment that may arise from persons purchasing strong beer or
28 fortified wine at the establishment; and

29 (c) Whether the sale of strong beer or fortified wine would be
30 detrimental to or inconsistent with a government-operated or funded
31 alcohol treatment or detoxification program in the area.

32 If the board receives no evidence or objection that the sale of
33 strong beer or fortified wine would be against the public interest, it
34 shall issue or renew the license without restriction, as applicable.
35 The burden of establishing that the sale of strong beer or fortified
36 wine by the licensee would be against the public interest is on those
37 persons objecting.

1 ~~((4))~~ (5) Licensees holding a grocery store license must maintain
2 a minimum three thousand dollar inventory of food products for human
3 consumption, not including pop, beer, strong beer, or wine.

4 ~~((5))~~ (6) Upon approval by the board, the grocery store licensee
5 may also receive an endorsement to permit the international export of
6 beer, strong beer, and wine.

7 (a) Any beer, strong beer, or wine sold under this endorsement must
8 have been purchased from a licensed beer or wine distributor licensed
9 to do business within the state of Washington.

10 (b) Any beer, strong beer, and wine sold under this endorsement
11 must be intended for consumption outside the state of Washington and
12 the United States and appropriate records must be maintained by the
13 licensee.

14 (c) A holder of this special endorsement to the grocery store
15 license shall be considered not in violation of RCW 66.28.010.

16 (d) Any beer, strong beer, or wine sold under this license must be
17 sold at a price no less than the acquisition price paid by the holder
18 of the license.

19 (e) The annual cost of this endorsement is five hundred dollars and
20 is in addition to the license fees paid by the licensee for a grocery
21 store license.

22 **Sec. 2.** RCW 66.24.371 and 2003 c 167 s 9 are each amended to read
23 as follows:

24 (1) There shall be a beer and/or wine retailer's license to be
25 designated as a beer and/or wine specialty shop license to sell beer,
26 strong beer, and/or wine at retail in bottles, cans, and original
27 containers, not to be consumed upon the premises where sold, at any
28 store other than the state liquor stores. Licensees obtaining a
29 written endorsement from the board may also sell malt liquor in kegs or
30 other containers capable of holding less than five and one-half gallons
31 of liquid. The annual fee for the beer and/or wine specialty shop
32 license is one hundred dollars for each store.

33 (2) Licensees under this section may provide, free or for a charge,
34 single-serving samples of two ounces or less to customers for the
35 purpose of sales promotion. Sampling activities of licensees under
36 this section are subject to RCW 66.28.010 and 66.28.040 ~~((and))~~.
37 Except as provided in this subsection, the cost of sampling under this

1 section may not be borne, directly or indirectly, by any manufacturer,
2 importer, or distributor of liquor. Domestic breweries,
3 microbreweries, and certificate of approval holders may bear both the
4 direct and the indirect costs of providing samples of their own brands
5 of beer. Domestic wineries may bear only the indirect costs of
6 providing samples of their own brands of wine.

7 (3) The board shall issue a restricted beer and/or wine specialty
8 shop license, authorizing the licensee to sell beer and only table
9 wine, if the board finds upon issuance or renewal of the license that
10 the sale of strong beer or fortified wine would be against the public
11 interest. In determining the public interest, the board shall consider
12 at least the following factors:

13 (a) The likelihood that the applicant will sell strong beer or
14 fortified wine to persons who are intoxicated;

15 (b) Law enforcement problems in the vicinity of the applicant's
16 establishment that may arise from persons purchasing strong beer or
17 fortified wine at the establishment; and

18 (c) Whether the sale of strong beer or fortified wine would be
19 detrimental to or inconsistent with a government-operated or funded
20 alcohol treatment or detoxification program in the area.

21 If the board receives no evidence or objection that the sale of
22 strong beer or fortified wine would be against the public interest, it
23 shall issue or renew the license without restriction, as applicable.
24 The burden of establishing that the sale of strong beer or fortified
25 wine by the licensee would be against the public interest is on those
26 persons objecting.

27 (4) Licensees holding a beer and/or wine specialty shop license
28 must maintain a minimum three thousand dollar wholesale inventory of
29 beer, strong beer, and/or wine.

30 **Sec. 3.** RCW 66.28.010 and 2004 c 160 s 9 and 2004 c 62 s 1 are
31 each reenacted and amended to read as follows:

32 (1)(a) No manufacturer, importer, distributor, or authorized
33 representative, or person financially interested, directly or
34 indirectly, in such business; whether resident or nonresident, shall
35 have any financial interest, direct or indirect, in any licensed retail
36 business, unless the retail business is owned by a corporation in which
37 a manufacturer or importer has no direct stock ownership and there are

1 no interlocking officers and directors, the retail license is held by
2 a corporation that is not owned directly or indirectly by a
3 manufacturer or importer, the sales of liquor are incidental to the
4 primary activity of operating the property as a hotel, alcoholic
5 beverages produced by the manufacturer or importer or their
6 subsidiaries are not sold at the licensed premises, and the board
7 reviews the ownership and proposed method of operation of all involved
8 entities and determines that there will not be an unacceptable level of
9 control or undue influence over the operation or the retail licensee;
10 nor shall any manufacturer, importer, distributor, or authorized
11 representative own any of the property upon which such licensed persons
12 conduct their business; nor shall any such licensed person, under any
13 arrangement whatsoever, conduct his or her business upon property in
14 which any manufacturer, importer, distributor, or authorized
15 representative has any interest unless title to that property is owned
16 by a corporation in which a manufacturer has no direct stock ownership
17 and there are no interlocking officers or directors, the retail license
18 is held by a corporation that is not owned directly or indirectly by
19 the manufacturer, the sales of liquor are incidental to the primary
20 activity of operating the property either as a hotel or as an
21 amphitheater offering live musical and similar live entertainment
22 activities to the public, alcoholic beverages produced by the
23 manufacturer or any of its subsidiaries are not sold at the licensed
24 premises, and the board reviews the ownership and proposed method of
25 operation of all involved entities and determines that there will not
26 be an unacceptable level of control or undue influence over the
27 operation of the retail licensee. Except as provided in subsections
28 (3) and (4) of this section, no manufacturer, importer, distributor, or
29 authorized representative shall advance moneys or moneys' worth to a
30 licensed person under an arrangement, nor shall such licensed person
31 receive, under an arrangement, an advance of moneys or moneys' worth.
32 "Person" as used in this section only shall not include those state or
33 federally chartered banks, state or federally chartered savings and
34 loan associations, state or federally chartered mutual savings banks,
35 or institutional investors which are not controlled directly or
36 indirectly by a manufacturer, importer, distributor, or authorized
37 representative as long as the bank, savings and loan association, or
38 institutional investor does not influence or attempt to influence the

1 purchasing practices of the retailer with respect to alcoholic
2 beverages. Except as otherwise provided in this section, no
3 manufacturer, importer, distributor, or authorized representative shall
4 be eligible to receive or hold a retail license under this title, nor
5 shall such manufacturer, importer, distributor, or authorized
6 representative sell at retail any liquor as herein defined. A
7 corporation granted an exemption under this subsection may use debt
8 instruments issued in connection with financing construction or
9 operations of its facilities.

10 (b) Nothing in this section shall prohibit a licensed domestic
11 brewery or microbrewery from being licensed as a retailer pursuant to
12 chapter 66.24 RCW for the purpose of selling beer or wine at retail on
13 the brewery premises and nothing in this section shall prohibit a
14 domestic winery from being licensed as a retailer pursuant to chapter
15 66.24 RCW for the purpose of selling beer or wine at retail on the
16 winery premises. Such beer and wine so sold at retail shall be subject
17 to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting
18 and bonding requirements as prescribed by regulations adopted by the
19 board pursuant to chapter 34.05 RCW, and beer and wine that is not
20 produced by the brewery or winery shall be purchased from a licensed
21 beer or wine distributor.

22 (c) Nothing in this section shall prohibit a licensed distiller,
23 domestic brewery, microbrewery, domestic winery, or a lessee of a
24 licensed domestic brewer, microbrewery, or domestic winery, from being
25 licensed as a spirits, beer, and wine restaurant pursuant to chapter
26 66.24 RCW for the purpose of selling liquor at a spirits, beer, and
27 wine restaurant premises on the property on which the primary
28 manufacturing facility of the licensed distiller, domestic brewer,
29 microbrewery, or domestic winery is located or on contiguous property
30 owned or leased by the licensed distiller, domestic brewer,
31 microbrewery, or domestic winery as prescribed by rules adopted by the
32 board pursuant to chapter 34.05 RCW.

33 (d) Nothing in this section prohibits retail licensees with a
34 caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from
35 operating on a domestic winery premises.

36 (2) Financial interest, direct or indirect, as used in this
37 section, shall include any interest, whether by stock ownership,
38 mortgage, lien, or through interlocking directors, or otherwise.

1 Pursuant to rules promulgated by the board in accordance with chapter
2 34.05 RCW manufacturers, distributors, and importers may perform, and
3 retailers may accept the service of building, rotating and restocking
4 case displays and stock room inventories; rotating and rearranging can
5 and bottle displays of their own products; provide point of sale
6 material and brand signs; price case goods of their own brands; and
7 perform such similar normal business services as the board may by
8 regulation prescribe.

9 (3)(a) This section does not prohibit a manufacturer, importer, or
10 distributor from providing services to a special occasion licensee for:
11 (i) Installation of draft beer dispensing equipment or advertising,
12 (ii) advertising, pouring, or dispensing of beer or wine at a beer or
13 wine tasting exhibition or judging event, or (iii) a special occasion
14 licensee from receiving any such services as may be provided by a
15 manufacturer, importer, or distributor. Nothing in this section shall
16 prohibit a retail licensee, or any person financially interested,
17 directly or indirectly, in such a retail licensee from having a
18 financial interest, direct or indirect, in a business which provides,
19 for a compensation commensurate in value to the services provided,
20 bottling, canning or other services to a manufacturer, so long as the
21 retail licensee or person interested therein has no direct financial
22 interest in or control of said manufacturer.

23 (b) A person holding contractual rights to payment from selling a
24 liquor distributor's business and transferring the license shall not be
25 deemed to have a financial interest under this section if the person
26 (i) lacks any ownership in or control of the distributor, (ii) is not
27 employed by the distributor, and (iii) does not influence or attempt to
28 influence liquor purchases by retail liquor licensees from the
29 distributor.

30 (c) The board shall adopt such rules as are deemed necessary to
31 carry out the purposes and provisions of subsection (3)(a) of this
32 section in accordance with the administrative procedure act, chapter
33 34.05 RCW.

34 (4) With respect to sampling activities under RCW 66.24.360 and
35 66.24.371, this section does not prohibit: (a) A domestic brewery,
36 microbrewery, or certificate of approval holder from furnishing its own
37 brands of beer to a licensee; or (b) a domestic brewery, microbrewery,
38 domestic winery, or certificate of approval holder from pouring or

1 dispensing samples of its own brands of beer or wine for a licensee's
2 customers. Such sampling activities, however, may occur no more than
3 eight times per calendar year, no longer than two consecutive days, and
4 no more frequently than once every four weeks.

5 (5) A license issued under RCW 66.24.395 does not constitute a
6 retail license for the purposes of this section.

7 ((+5)) (6) A public house license issued under RCW 66.24.580 does
8 not violate the provisions of this section as to a retailer having an
9 interest directly or indirectly in a liquor-licensed manufacturer.

10 **Sec. 4.** RCW 66.28.040 and 2004 c 160 s 11 are each amended to read
11 as follows:

12 Except as permitted by the board under RCW 66.20.010, no domestic
13 brewery, microbrewery, distributor, distiller, domestic winery,
14 importer, rectifier, certificate of approval holder, or other
15 manufacturer of liquor shall, within the state of Washington, give to
16 any person any liquor; but nothing in this section nor in RCW 66.28.010
17 shall prevent a domestic brewery, microbrewery, distributor, domestic
18 winery, distiller, certificate of approval holder, or importer from
19 furnishing samples of beer, wine, or spirituous liquor to authorized
20 licensees for the purpose of negotiating a sale, in accordance with
21 regulations adopted by the liquor control board, provided that the
22 samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210,
23 and in the case of spirituous liquor, any product used for samples must
24 be purchased at retail from the board; nothing in this section shall
25 prevent the furnishing of samples of liquor to the board for the
26 purpose of negotiating the sale of liquor to the state liquor control
27 board; nothing in this section shall prevent a domestic brewery,
28 microbrewery, domestic winery, distillery, certificate of approval
29 holder, or distributor from furnishing beer, wine, or spirituous liquor
30 for instructional purposes under RCW 66.28.150; nothing in this section
31 shall prevent a domestic winery, certificate of approval holder, or
32 distributor from furnishing wine without charge, subject to the taxes
33 imposed by RCW 66.24.210, to a not-for-profit group organized and
34 operated solely for the purpose of enology or the study of viticulture
35 which has been in existence for at least six months and that uses wine
36 so furnished solely for such educational purposes or a domestic winery,
37 or an out-of-state certificate of approval holder, from furnishing wine

1 without charge or a domestic brewery, or an out-of-state certificate of
2 approval holder, from furnishing beer without charge, subject to the
3 taxes imposed by RCW 66.24.210 or 66.24.290, to a nonprofit charitable
4 corporation or association exempt from taxation under section 501(c)(3)
5 of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) for use
6 consistent with the purpose or purposes entitling it to such exemption;
7 nothing in this section shall prevent a domestic brewery or
8 microbrewery from serving beer without charge, on the brewery premises;
9 nothing in this section shall prevent donations of wine for the
10 purposes of RCW 66.12.180; ~~((and))~~ nothing in this section shall
11 prevent a domestic winery from serving wine without charge, on the
12 winery premises; and, with respect to sampling activities under RCW
13 66.24.360 and 66.24.371, and so long as such sampling activities occur
14 no more than eight times per calendar year, no longer than two
15 consecutive days, and no more frequently than once every four weeks,
16 nothing in this section shall prevent: (1) A domestic brewery,
17 microbrewery, or certificate of approval holder from furnishing its own
18 brands of beer to a licensee; or (2) a domestic brewery, microbrewery,
19 domestic winery, or certificate of approval holder from pouring or
20 dispensing samples of its own brands of beer or wine for a licensee's
21 customers.

22 **Sec. 5.** RCW 66.28.155 and 2004 c 160 s 15 are each amended to read
23 as follows:

24 (1) A domestic brewery, microbrewery, domestic winery, distillery,
25 distributor, certificate of approval holder, or its licensed agent may
26 conduct educational activities or provide product information to the
27 consumer on the licensed premises of a retailer. Information on the
28 subject of wine, beer, or spirituous liquor, including but not limited
29 to, the history, nature, quality, and characteristics of a wine, beer,
30 or spirituous liquor, methods of harvest, production, storage,
31 handling, and distribution of a wine, beer, or spirituous liquor, and
32 the general development of the wine, beer, and spirituous liquor
33 industry may be provided by a domestic brewery, microbrewery, domestic
34 winery, distillery, distributor, certificate of approval holder, or its
35 licensed agent to the public on the licensed premises of a retailer.
36 The retailer requesting such activity shall attempt to schedule a
37 series of brewery, winery, authorized representative, or distillery and

1 distributor appearances in an effort to equitably represent the
2 industries. Nothing in this section permits a domestic brewery,
3 microbrewery, domestic winery, distillery, distributor, certificate of
4 approval holder, or its licensed agent to receive compensation or
5 financial benefit from the educational activities or product
6 information presented on the licensed premises of a retailer. The
7 promotional value of such educational activities or product information
8 shall not be considered advancement of moneys or of moneys' worth
9 within the meaning of RCW 66.28.010.

10 (2) A domestic brewery, microbrewery, domestic winery, or
11 certificate of approval holder may pour or dispense single-serving
12 samples of its own brands of beer or wine to customers of grocery store
13 and beer and/or wine specialty shop licensees consistent with the
14 provisions of RCW 66.24.360 and 66.24.371 for the purposes of sales
15 promotion, so long as such sampling activities occur no more than eight
16 times per calendar year, no longer than two consecutive days, and no
17 more frequently than once every four weeks. The promotional value of
18 such services shall not be considered advancement of moneys or of
19 moneys' worth within the meaning of RCW 66.28.010.

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